IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

Crl.L.P..No. 248 of 2007()

ST.3340/2004 of J.M.F.C.-I,PALAKKAD

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PETITIONER/COMPLAINANT'

K.K.BHAGEERATHAN, S/O KUMARAN,
AGED 47 YEARS, S.L.N.RICE MILL,
KUZHALMANNAM, PALAKKAD.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENTS: STATE & ACCUSED

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1. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. E.V.RAJEEV, S/O VIJAYAN,
ERINJERY, KUNDALIYUR, CHETTUVA, THRISSUR.

BY ADV. SRI.C.C.THOMAS FOR R2
P.P.SRI.C.M.KAMMAPPU FOR R1

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 248 of 2007

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Dated this the 19th day of June, 2007

O R D E R

Petitioner was the complainant in S.T.No.3340/2004 on the file of the Judicial Magistrate of the First Class-I, Palakkad. The case set up against the 2nd respondent is that the 2nd respondent had borrowed an amount of Rs.1,00,000/- on executing a promissory note. When the 2nd respondent was called upon in repay the amount, he had issued Ext.P1 cheque. It is also stated that when the cheque was presented for encashment, it was dishonoured for insufficiency of funds. After receipt of the intimation from the bank and after complying the statutory formalities, the complaint has been filed against the 2nd respondent alleging commission of offence under section 138 of the Negotiable Instruments Act . To prove the case against the 2nd respondent, the petitioner himself was examined as PW1 and Exts.P1 to P 6 were marked. After closing the evidence on the side of the prosecution, the 2nd respondent was questioned under section 313 Cr.P.C. Denying the allegation in the complaint the 2nd respondent had stated that he had not borrowed any amount as alleged in the complaint and Ext.P1 cheque was issued as a security to Ext.D3

agreement. To prove his case, the 2nd respondent himself was examined as DW1 and DW2 and DW3 were also examined. Exts.D1 to D4 were marked on the side of the defence. After considering the entire evidence, the trial court found that the petitioner was not able to prove his case that Ext.P1 cheque was issued by the 2nd respondent in discharge of debt or liability and hence, the 2nd respondent was acquitted under section 255(1) Cr.P.C. The above finding is challenged in this petition.

2. This Court heard the learned counsel for the petitioner and perused the records made available to this Court.

3. The specific case set up by the petitioner before the court was that the 2nd respondent borrowed an amount of Rs.1,00,000/- from him on 10-2-2003 and executed a promissory note to that effect and when the 2nd respondent was called upon to repay the amount, he issued a cheque in favour of the petitioner. The trial court after taking into consideration of all the facts and circumstances of the case found that "**the question of advancing money on strength of Ext.P1 which mentioned in Ext.D3 clearly goes against case set up by the complainant, much less in view of Ext.D3 in question of granting loan and issuance of Ext.P1 in consideration thereof is absolutely false and cannot be believed at all".** The trial court relied on a decision of this Court reported in Mohanan V.

Bindukumar (2003(2) KLT to come to the conclusion that the 2nd respondent can rebut the presumption under section 138 of the Act by adducing probable or reasonable evidence.

4. Considering the entire facts and circumstances of the case, this Court is of the view that the findings entered by the trial court are on evidence. Being an appeal against the acquittal, unless and until compelling reasons are there, this Court is not inclined to interfere with the impugned judgment. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.l.P.No. /200

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ORDER

-6-2007